

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 SECURITIES AND EXCHANGE
11 COMMISSION,

12 Plaintiff,

13 v.

14 LOUIS V. SCHOOLER and FIRST
15 FINANCIAL PLANNING
16 CORPORATION d/b/a WESTERN
17 FINANCIAL PLANNING
18 CORPORATION,

19 Defendants.

Case No.: 3:12-CV-02164-GPC-JMA

**ORDER APPROVING SALE OF
STEAD I PROPERTY AND
AUTHORITY**

[ECF No. 1643]

19 Before the Court is the Receiver's Motion for Approval of Sale of 42-Acre Portion
20 of Stead I Property. ECF No. 1643. Plaintiff SEC filed a Statement of Non-Opposition
21 to the Motion. ECF No. 1662. Based upon a review of the moving papers and the
22 applicable law, the Court **GRANTS** the Receiver's motion.

23 **BACKGROUND**

24 **A. The SEC Enforcement Action**

25 On January 21, 2016, the Court granted the SEC's motion for final judgment
26 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this civil
27 action against Defendant Schooler and Western Financial Planning Corporation
28 ("Western") four years earlier, on account of their practice of defrauding investors into

1 purchasing unregistered securities. *Id.* (citing Second Summary Judgment Order, ECF
2 No. 1081). To carry out the scheme, Defendant Western bought undeveloped real estate,
3 with cash or through financing, and simultaneously formed one or more General
4 Partnerships (“GPs”) to own the land. First Summary Judgment Order, ECF No. 1074 at
5 10. Western then sold General Partnership units to investors and sold the undeveloped
6 real estate to the General Partnerships. *Id.* at 10. In total, Western raised approximately
7 \$153 million from almost 3,400 investors through implementing this scheme. *Id.*

8 **B. The Decline of the General Partnership Assets**

9 In 2013, the Court-appointed Receiver, Thomas Hebrank, engaged licensed
10 appraisers to value the 23 properties owned by the General Partnerships. ECF No. 203 at
11 2. Those professionals determined that the land was worth \$16,328,000 and that the net
12 appraised value (appraised value less outstanding balances on all mortgages) of the
13 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of the
14 total funds that the general partners had invested in the land. *Id.* The Receiver further
15 estimated that, based on the then-current appraised values of the land, the average GP
16 investor would suffer an 88.40% loss if the GP properties were sold in 2013. *Id.*

17 Three years later, soon after final judgment was entered, the Receiver moved for
18 authority to conduct an Orderly Sale of the General Partnership Properties (“Orderly
19 Sale”). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the Receiver indicated
20 that the aggregate value in the GP accounts had been steadily decreasing while litigation
21 was ongoing. *See id.* In September 2012, the Receivership had assets of \$6.6 million.
22 *Id.* at 1. By the end of 2015, the assets had dropped to \$3.5 million, and the Receiver had
23 reason to believe that the value of the Receivership would continue to drastically
24 decrease through the end of 2016.¹ This decline, he noted, was due to three main factors:

25
26
27 ¹ The Receiver provided the Court with projections that the Receivership would further decline to \$1.8
28 million by the end of 2016. Indeed, the Receiver’s projection has since proved to be accurate. The Twentieth
Interim Status Report submitted by the Receiver indicates that the Receivership’s current cash and cash
equivalent balance was \$666,113. ECF No. 1505 at 17.

1 (1) 14 of the 23 properties were not appreciating in value²; (2) the properties were not
2 worth enough to cover the costs of the GPs carrying the properties; and (3) low levels of
3 investor contributions to pay GP administrator fees, tax preparation fees, property taxes,
4 property insurance premiums, and notes owed to Western. *See id.* at 1-2. In other words,
5 the Receiver concluded, because the money being spent to hold the GP properties was
6 disproportionately high in relation to the value of the GP's real estate assets, the
7 Receivership was in a steady decline. *Id.*

8 In order to prevent the value of the Receivership from falling into further decline,
9 the Receiver proposed that the GP properties be sold in accordance with Court-approved
10 orderly sale procedures. *Id.* The Receiver's proposal explained that the best way to
11 maximize the value of all of the GP assets for the benefit of all investors, irrespective of
12 any given investors' direct property interest, was to initiate an orderly sale of the GP
13 properties. *Id.* The Receiver estimated that the Receivership, after conducting sales of
14 the GP properties, Western's properties and asset recovery, would be worth \$21,804,826.
15 *Id.* at 16.

16 **C. The Receiver's Motion for Orderly Sale**

17 On May 20, 2016, the Court held a hearing on the Receiver's Motion for Orderly
18 Sale, at which time the Court heard from the SEC, Defendant, the Receiver, and the
19 investor-intervenors — that is, those investors who were granted permission under Rule
20 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A short time
21 thereafter, on May 25, 2016, the Court approved, in part, the Receiver's Orderly Sale
22 process.³ ECF No. 1304.

25 ² By way of example, the Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was about
26 \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

27 ³ The Court directed the Receiver to file a Modified Orderly Sale Process that incorporated the public sale
28 process consistent with the requirement of 28 U.S.C. § 2001. ECF No. 1304. The Receiver filed a modified
proposal on June 8, 2016 (ECF No. 1309) and the Court approved the modified proposal on August 30, 2016
(ECF No. 1359).

1 In approving the Orderly Sale, the Court addressed and evaluated the concerns
2 expressed by the Receiver, the SEC, and myriad investors, all of whom held differing
3 positions on whether the Orderly Sale would benefit the Receivership estate. *See*
4 *generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC Response), 1234 (Dillon
5 Investors' Response), 1235 (Graham Investors' Response); *see also, e.g.*, ECF Nos. 1240,
6 1242, 1244, 1249-1257 (Letters from Investors). The Court also took into consideration
7 the recommendations of the investors' experts, as set forth in the Xpera Report. *See* ECF
8 No. 1304 at 16. The Xpera Report, the Court noted, substantially agreed with the
9 Receiver on how to maximize the value of the Receivership estate and, for the most part,
10 agreed on the appraised value of the various GP properties. *Id.* As such, the Court
11 directed the Receiver, where feasible, to incorporate the recommendations of the Xpera
12 Report into his ultimate Orderly Sale proposal. *Id.* at 19.

13 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
14 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the Xpera
15 Report. ECF No. 1341-1. The Court granted the Receiver's motion on August 30, 2016.
16 ECF No. 1359. CBRE presented its findings on the GP properties on October 24, 2016.
17 ECF No. 1419 (filed under seal). On November 22, 2016, the Receiver submitted a
18 report evaluating the Xpera Report recommendations. ECF No. 1405. The Court
19 reviewed the Receiver's report and adopted the recommendations contained therein on
20 December 12, 2016. ECF No. 1423.

21 **D. Stead I Property**

22 The Stead I property is approximately 106 acres of undeveloped land in Washoe
23 County, Nevada. ECF No. 1643-1 at 1. The Stead I Property consists of 12 parcels that
24 are divided by two streets and a rail line. *Id.* Prior to being transferred to the Qualified
25 Settlement Fund Trust, 50% of the Stead I Property was held by two General
26 Partnerships, P-39 Partners and P-40 Partners. *Id.* The remaining 50% was held by P51,
27 LLC, a holding accompany wholly owned by Western Financial Planning Corporation.
28 *Id.*

1 Since the Receiver was appointed, the Stead I Property has been appraised several
2 times. In 2013, the Receiver obtained an appraisal of \$395,000.00. ECF No. 1405, Ex.
3 A. In 2015, the Stead I Property's value was estimated to be \$420,000.00. *Id.* In 2016,
4 Xpera Group valued the Stead I Property between \$1,584,000.00 and \$3,168,000. ECF
5 No. 1245-1 at 63-64. This valuation was based on dividing the property into small
6 parcels that would be sold individually over several years. *Id.* On the other hand, CBRE
7 recommended that the Stead I Property be sold "as is" with an estimated value of
8 \$860,600.00, rather than incurring the expense of dividing the property into smaller
9 parcels. ECF No. 1405, Ex. A.

10 The Receiver first received an unsolicited offer from the Lansing Companies, LLC.
11 ECF No. 1643-1 at 2. Lansing offered to purchase 42 acres of the Stead I Property for
12 \$1,000,000.00. *Id.* The Receiver notified the investors of this offer and negotiated sale
13 terms with Lansing. *Id.* The Receiver and Lansing agreed on a purchase price of
14 \$1,100,000.00 for the 42 acre parcel, along with \$66,000.00 Lansing would pay to its
15 broker. *Id.*

16 The Receiver then requested approval from the Court of the sale to Lansing. *Id.*
17 Along with this request, the Receiver informed the Court that it would conduct a public
18 auction consistent to the requirements of 28 U.S.C. § 2001(a). ECF No. 1643-1 at 7. The
19 Receiver asserted that it would publish a notice of sale once a week for four weeks in the
20 Reno Journal-Gazette and conduct a live public auction on September 6, 2018. *Id.* at 7-8.
21 Moreover, the Receiver informed all interested persons of the opportunity to overbid at
22 the public auction as long as they qualified themselves to bid by the bid qualification
23 deadline of September 4, 2018. *Id.* at 8.

24 On September 5, 2018, the Receiver filed a Notice of Receipt of Qualified
25 Overbid. ECF No. 1659. PEFLP, LLC, submitted a bid of \$1,282,600.00 for the 42-acre
26 portion of the Stead I Property. *Id.* The auction was rescheduled to September 11, 2018,
27 as agreed upon by both bidders so that they could be available to attend in person. ECF
28 No. 1660 at 1 n.1. At the auction, Lansing informed the Receiver that it would not bid

1 further for the 42-acre parcel, making PEFLP's bid of \$1,282,600.00 the winning bid. *Id.*
2 at 2. The Receiver now asks the Court to approve the sale of the 42-acre portion of the
3 Stead I Property to PEFLP for \$1,282,600.00.

4 **E. Conclusion**

5 The Court finds that the purchase price of \$1,282,600.00 is reasonable. This price
6 for 42 acres of the 106-acre property is much higher than the multiple appraisals of the
7 entire Stead I Property that the Receiver obtained. Moreover, this purchase price is
8 consistent with Xpera's valuation of \$30,000.00 per acre based on dividing the Stead I
9 Property into small parcels and selling them one by one.

10 The Court is also satisfied that the Receiver has complied with the modified
11 Orderly Sale procedures. The Receiver's notice of the sale adhered to the modified
12 Orderly Sale procedures—which require that notice of the sale be published “in the
13 county, state, or judicial district of the United States *wherein the realty is situated*,” 28
14 U.S.C. § 2002 (emphasis added)—by publishing notice in the Reno Journal-Gazette and
15 by providing notice to the investors. Accordingly, and given that no opposition to the
16 present Motion has been raised, the Court **GRANTS** Receiver's motion for approval of
17 sale.

18 **ORDER**

19 The Motion for Approval of Sale of 42-Acre Portion of Stead I Property filed by
20 Thomas C. Hebrank—the Court-appointed receiver for First Financial Planning
21 Corporation d/b/a Western Financial Planning Corporation, its subsidiaries, and the
22 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order entered on
23 March 13, 2013—having been reviewed and considered by this Court, as well as the
24 Receiver's Notice of Receipt of Qualified Overbid and Notice of Results of Auction, and
25 for good cause appearing therefore, the Court finds as follows:

- 26 1. The Motion is granted;
- 27 2. The sale of the 42-acre portion of the property known as Stead I, as
28 described in Exhibit A to the Notice of Results of Action (“Property”), by Thomas C.

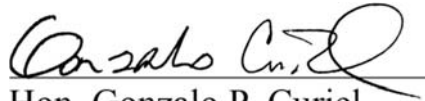
1 Hebrank, as receiver for P-39 Partners, P-40 Partners, and P51, LLC, to PEFLP, LLC is
2 confirmed and approved.

3 3. The purchase price of \$1,282,600.00 for the Property is confirmed and
4 approved;

5 4. The Receiver is immediately authorized to complete the sale transaction,
6 including executing any and all documents as may be necessary and appropriate to do so.

7 **IT IS SO ORDERED.**

8 Dated: September 17, 2018

9 
10 Hon. Gonzalo P. Curiel
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28